

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
17.30.1202, 17.30.1203, 17.30.1304,)
17.30.1322, 17.30.1331, 17.30.1340,) (WATER QUALITY)
17.30.1341, 17.30.1342, 17.30.1344,)
17.30.1345, 17.30.1346, 17.30.1350,)
17.30.1354, 17.30.1361, and 17.30.1372)
pertaining to MPDES program updates)

TO: All Concerned Persons

1. On April 30, 2020, the Board of Environmental Review published MAR Notice No. 17-411 pertaining to a notice of proposed amendment of the above-stated rules at pages 750 of the 2020 Montana Administrative Register, Issue Number 8. On May 29, 2020, the board published an amended notice to hold a virtual public hearing on the proposed amendment at page 942 of the 2020 Montana Administrative Register, Issue Number 10.

2. The board has amended ARM 17.30.1202, 17.30.1203, 17.30.1304, 17.30.1322, 17.30.1331, 17.30.1340, 17.30.1341, 17.30.1342, 17.30.1344, 17.30.1345, 17.30.1346, 17.30.1350, 17.30.1354, and 17.30.1361 as proposed.

3. The board has amended ARM 17.30.1372 as proposed but with the following changes, stricken matter interlined, new matter underlined:

17.30.1372 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD (1) through (5)(d) remain as proposed.

(e) for major permits and MPDES general permits, ~~in lieu of~~ addition to the ~~requirement for~~ publication of a notice in a daily or weekly newspaper, as described in (5)(b), the department may also publish all notices of activities described in (1) to the ~~permitting authority's~~ department's public website. ~~If the department selects this option for a draft permit, as defined in ARM 17.30.1304, in addition to meeting the requirements in (6), the department must post the draft permit and fact sheet on the website for the duration of the public comment period.~~

(6) through (8) remain as proposed.

4. The board has considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT NO. 1: We oppose ARM 17.30.1372(5)(e), which allows public notice for major permits and MPDES general permits on the permitting agency's website. Due process requires an independent party to publish and verify the public notice, and a newspaper notice does that, as opposed to a government website. We do not understand the government's stated motive to expand public participation or notice by not placing notices in newspapers. The legal requirement is to place it in

newspapers.

RESPONSE: The board agrees, in part, with the comment. Section 2-3-103(1)(a), MCA, requires each agency to develop procedures for encouraging the public to participate in agency decisions of significant interest to the public. Government websites are increasingly becoming the avenue for the dissemination of information to the public and the proposed amendment aligns with federal rule amendments. However, to encourage public participation, the board will continue to require newspaper notice for major and MPDES general permits and will clarify that the department may, in addition, provide notice of proposed permit actions on its public website.

COMMENT NO. 2: Citizens do not use government websites to find public notice with the reliability and predictability that they look to newspapers to find notices. The technology of authenticating web postings is in its infancy, but a newspaper notice creates a permanent record and is supported with an affidavit. Also, the Montana Newspaper Association aggregates every public notice placed in the state of Montana on a searchable database.

RESPONSE: See response to NO. 1.

COMMENT NO. 3: ARM 17.30.1372(5)(e) should be revised to require public notice on the agency website in addition to the newspaper requirement for major permits and general permits. The Montana State Library has a map of broadband DSL and fiberoptic technology that demonstrates not all Montanans have access to reliable and quick internet service, especially in rural areas.

RESPONSE: See response to NO. 1.

COMMENT NO. 4: The option to publish public notice on the agency website is in the federal regulations, and other regions use it. The intent of ARM 17.30.1372(5)(e) is to provide flexibility to the permitting authority, so they may reach as many people as possible. A newspaper should be used if it is the best way to reach people, and an agency website should be used if it is the best way to reach people.

RESPONSE: The board agrees with the comment. See response to NO. 1.

COMMENT NO. 5: "I am a proponent of this rule change, as it lines up DEQ regulations with federal regulations that govern permitting tasks."

RESPONSE: The board and the department thank you for the comment. See also response to NO. 1.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes

EDWARD HAYES

Rule Reviewer

BY: /s/ Christine Deveny

CHRISTINE DEVENY

Chair

Certified to the Secretary of State October 13, 2020.